

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 16,837  
 )  
Appeal of )

# INTRODUCTION

The petitioner appeals a decision by the Department of PATH terminating Medicaid benefits for her children and denying her an increase in Food Stamp benefits to cover her children. The issue is whether the petitioner's children can be considered members of her household within the meaning of the pertinent regulations.

## FINDINGS OF FACT

1. The petitioner is the mother of three minor children. She is divorced from the children's father. According to the terms of the petitioner's divorce decree she and the father "share the legal and physical rights and responsibilities pertaining to each of their three children . . .the children shall reside primarily with the Father until and unless the parties mutually decide otherwise."

2. The petitioner admits that consistent with the decree her "contact" with the children in her home occurs only every other weekend, school year vacations, and for an extended period in the summer.

3. The decree further provides that the father is responsible for providing medical coverage for the children except that the parties are to share uninsured medical expenses when the children are with the petitioner.

4. The petitioner maintains that she cannot afford to provide food and medical coverage for the children when they are with her. She also maintains that despite the terms of the decree the father has not maintained medical insurance for the children and that he refuses to apply for Medicaid in their behalf.

5. The Department has determined that the children are not eligible to receive Medicaid and Food Stamps as members of the petitioner's household.

ORDER

The decision of the Department is affirmed.

REASONS

The Food Stamp regulations require the Department to make payments to "households" which are generally defined as follows:

A household is composed of one of the following individuals or groups of individuals;

- iii A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

F.S.M. § 273.1(a)(1)

The regulations do not further define the term "individuals who live together." However that phrase has been interpreted by the Board to mean a person who primarily resides in the home applying for Food Stamps, if the person lives in two homes. See Fair Hearing No. 14,929. In that decision, the Board was presented with very similar facts: a father who had joint custody of his minor children who lived in their mother's house except every other weekend, some holidays, school vacations and part of the summer when they were with him, applied for Food Stamps. The Board concluded that the children were clearly residing primarily with the mother and that as such they could not be included in the father's household.

There is no reason to distinguish the facts in this case from the prior one. The children cannot be considered members of both households because both households could apply for Food Stamps and, if financially eligible, receive benefits to feed the same children. There is no mechanism for pro-rating the benefits. The regulations prohibit any person from participating in the program as a member of more than one household. F.S.M. 273.3. Thus, it must be concluded that the children cannot be considered members of the petitioner's food stamp household.

Categorical eligibility for Medicaid is determined under the rules of the ANFC program. Medicaid Manual § M3000. The Board has consistently held that W.A.M. § 2242.2 defines an

"eligible parent" for ANFC as "an individual who. . .lives in the same household with one or more eligible. . .children."<sup>1</sup> See Fair Hearing No. 15,480. The regulations also require that "to be eligible for public assistance (ANFC), a dependent child shall be living with a relative in a residence maintained as a home by such relative. . ." W.A.M. 2302.1.

As in the case of Food Stamps, see supra, the Board has held that only one household in which a child is living can be potentially eligible at any one time for monthly ANFC benefits, and that it is the parent who provides the primary "home" for the children who is eligible for ANFC. Fair Hearing No. 5553; Aff'd. Monro-Dorsey v. D.S.W., 144 VT. 614 (1984). The primary home rule was also adopted in Fair Hearings 9,521, 11,182, and 15,480 in which the parents had court-ordered joint physical custody of the child.

In this case, while the petitioner continues to have joint legal and physical custody of the children, the court has clearly given the primary responsibility for providing their medical care and their primary residence to the father.

By giving the father these responsibilities the Court has in effect chosen the children's "primary" home for purposes of Medicaid eligibility. The Board has repeatedly noted (see

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<sup>1</sup> This regulation is derived from the state statute governing "Aid and Services to Needy Families" which provides that "[a]id shall be given for the benefit of a dependent child to the relative with whom the child is living unless otherwise provided." 33 V.S.A. § 1103(a).

supra) that it cannot overlook or second-guess such court decisions.

The result for the petitioner (and her children) appears to be an unfortunate one. Although the petitioner appears to be providing care for the children for a substantial amount of time she cannot claim that she is the primary provider of their care. Absent any regulation in the Department's rules which would allow a proration of benefits, this matter can only be addressed through appeal to the family court (which the petitioner was advised to do) or by reliance on the voluntary generosity of the children's father. Inasmuch as the Department's decision that the petitioner is ineligible for Food Stamp and Medicaid benefits in the children's behalf is supported by applicable law and regulation, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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